



March 7, 2023

The Honorable William C. Smith, Jr.
Chairman, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

**Senate Bill 762 (Criminal Law - Drug Paraphernalia for Administration - Decriminalization)
- FAVORABLE**

Dear Chair Smith and Senate Judicial Proceedings Committee members,

Baltimore Harm Reduction Coalition writes to express our support for Senate Bill 762 (Criminal Law - Drug Paraphernalia for Administration - Decriminalization). SB762 will revise existing criminal law to remove items that could be used to consume drugs from what is considered drug paraphernalia, effectively decriminalizing possession of those items. Under current law, the use, possession, delivery, or sale of paraphernalia to inject, ingest, inhale, or otherwise introduce a controlled dangerous substance into the human body is a criminal offense in Maryland and a first-time violation is subject to a misdemeanor and \$500 maximum fine. Subsequent violations are subject to a misdemeanor, up to two years of imprisonment, and/or a maximum fine of \$2,000.¹

There are a few exceptions to paraphernalia criminalization under current law. The Maryland General Assembly repealed the criminal prohibition of cannabis-related paraphernalia in 2015,² granted exemption for possession of some drug paraphernalia for participants of syringe service programs in 2016,³ and repealed the criminal prohibition of items to test or analyze drugs, like fentanyl test strips, in 2018.⁴

Legislation passed by the Maryland General Assembly in 2016 has allowed for the expansion of syringe services programs (SSPs) statewide in order to distribute harm reduction supplies to prevent transmission of infectious diseases such as HIV and Hepatitis C. The research supporting the numerous health benefits of SSPs is clear and extensive. **Every scientific and medical organization to study the issue has shown that legal access to sterile supplies reduces the spread of HIV, hepatitis, and other blood-borne diseases.** Studies have also shown that access to supplies does not increase improperly discarded needles,⁵ rates of drug

¹ COMAR § 5-619 Drug Paraphernalia

² Criminal Law – Use and Possession of Marijuana and Drug Paraphernalia (2015). SB0517 (CH0004)

³ Public Health – Opioid-Associated Disease Prevention and Outreach Program (2016). SB0097 (CH0348)

⁴ Criminal Law – Prohibitions, Prosecutions, and Corrections (2018). SB1137 (CH0145)

⁵ New York Academy of Medicine. New York State Expanded Syringe Access Demonstration Program Evaluation. January 15, 2003

use,⁶ or other criminalized activity.⁷ Additionally, people who use SSPs are more likely to reduce injections, to stop injecting altogether, to begin drug treatment, and to remain in drug treatment once started.

For these health benefits to materialize in Maryland, people need to trust that they can access supplies without law enforcement interference. When supplies are broadly considered illegal, even some registered SSP participants experience harassment and citation from law enforcement who do not understand the confusing patchwork of paraphernalia exceptions. The citation is usually dismissed as *nolle pros* once a participant goes to court with the proper documentation. However, the harassment experienced and the resources required to attend court is disruptive and unjust, and should not be underestimated.

While documented program participants are exempt from prosecution for possessing hypodermic needles and other items to prevent the spread of infectious disease, the protection does not extend to those who don't have access to a program, or to those who deliver syringes on behalf of a syringe service program to those hard to reach participants. This includes people who are too afraid of public exposure to access the services on their own or individuals with physical and mental disability.⁸ This delivery tactic is known as secondary or satellite distributors.⁹ These participants are able to provide supplies to more people than actually visit the program. Unlike the myths purported by Governor Hogan in his 2021 veto message, this service is primarily conducted between people who already have a relationship with one another, such as friends and family members. Rarely do secondary distributors ever report supplying strangers with paraphernalia.¹⁰ The most common motivation for secondary distributors is to protect their community from the spread of diseases and to help their family and friends.¹¹

This also includes those Marylanders who live in rural areas and must obtain supplies from other sources, such as pharmacies. The Code of Maryland Regulations (COMAR) states that **syringes may be sold without a prescription with an indication of need**,¹² and the Maryland Board of Pharmacy voted unanimously in 2007, and renewed support again in 2017, to approve that prevention of disease is an acceptable indication of need. Therefore, in all circumstances that a pharmacist believes that the provision of syringes will reduce the spread of disease, they are acting in accordance with COMAR and the Maryland Board of Pharmacy. However, the individual obtaining syringes from a pharmacy or other source is not protected by law. As a

⁶ National Institutes of Health Consensus Panel, Interventions to Prevent HIV Risk Behaviors (Kensington, MD: National Institutes of Health Consensus Program Information Center, February 1997).

⁷ P. Lurie, A.L. Reingold, B. Bowser (eds). The Public Health Impact of Needle Exchange Programs in the United States and Abroad: Summary, Conclusions and Recommendations (1993)

⁸ Murphy, S., Kelley, M. S., & Lune, H. (2004). The health benefits of secondary syringe exchange. *Journal of Drug Issues*, 34(2), 245-268.

⁹ Valente, T. W., Foreman, R. K., Junge, B., & Vlahov, D. (1998). Satellite exchange in the Baltimore Needle Exchange Program. *Public health reports (Washington, D.C. : 1974)*, 113 Suppl 1(Suppl 1), 90-96.

¹⁰ Snead J, Downing M, Lorvick J, et al. Secondary syringe exchange among injection drug users. *J Urban Health*. 2003;80(2):330-348. doi:10.1093/jurban/jtg035

¹¹ *ibid*.

¹² Maryland Board of Pharmacy News. Fall 2017.

result, they are at risk of being saddled with a citation and criminal record which can affect future access to employment, education, and social services.

To ensure safe disposal of supplies once used, people need to be able to trust that they can hold onto supplies until they reach a proper disposal site without law enforcement interference. People may throw their used supplies away quickly because they fear the police could use these items as evidence of drug use and arrest them. Indeed, paraphernalia charges are often used as a catch-all tool that enables an officer to make an arrest even when no other evidence of a crime may be present.

Reducing infection and encouraging proper disposal are compelling reasons on their own, and this measure also has a beneficial economic impact. Studies and cost benefit analyses show that access to sterile supplies saves money, largely from averted HIV, hepatitis B, and hepatitis C infections.¹³ A sterile needle costs about 10 cents wholesale and 50 cents retail. Lifetime AIDS care for one person costs about \$618,000.¹⁴ A safer smoking kit costs a couple of dollars, but annual care for one person with hepatitis C infection is \$10,000 with a lifetime cost of \$100,000. Preventing only one case of HIV or hepatitis C infection annually translates into enormous savings.¹⁵

Equipping people to use drugs more safely is positive for everyone in the community-- not only in stemming the spread of infectious disease, but also in lifting the stigma that isolates people who use drugs. When our laws are unclear, law enforcement may use their discretion in a way that further marginalizes people who are most at risk of infectious disease and overdose, including people most disproportionately impacted by the COVID-19 pandemic.

We believe that this bill will simplify Maryland's paraphernalia laws and clarify that possession of harm reduction supplies to prevent infectious disease is not a crime. **We ask that the Senate Judicial Proceedings Committee give SB762 a favorable report.**

¹³ Australian Commonwealth Department of Health and Aging. Return on Investment in Needle and Syringe Programs in Australia.

¹⁴ Schackman, Bruce R., et al. The Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States. *Medical Care*. 44 (11):990-997 (2006).

¹⁵ Winnipeg Regional Health Authority, Population and Public Health Program. Safer Crack Use Kit Distribution in the Winnipeg Health Region. October 2012.